IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

DOSSIE FAISON, JR.,	)	
	)	
Plaintiff,	)	**Civil Action No. 7:00CV00739**
	)	
v.	)	**MEMORANDUM OPINION**
	)	
SGT. D. DAMRON, et al.,	)	**By: Samuel G. Wilson,**
	)	**Chief United States District Judge**
Defendants.	)	
	)	

Defendant Dossie Faison Jr. ("Faison"), a Virginia inmate at the Red Onion State Prison, brings this *pro se* action under the Civil Rights Act, 42 U.S.C. § 1983, with jurisdiction vested under 28 U.S.C. § 1343.[1] Faison claims violations of his Eighth Amendment right to be free from cruel and unusual punishment and his right under the Fourteenth Amendment not to be deprived of liberty without due process.[2] Specifically, with respect to the Eighth Amendment claim, Faison alleges that Defendant Sergeant D. Damron ("Damron") and J. Armatrout ("Armatrout") used excessive force in placing Faison in five-point restraints for forty-eight hours. With respect to the due process claim, Faison alleges that Damron and Armentrout failed to provide him with due process before punitively restraining him. Faison also claims that Defendants Warden True ("True") and Regional Director R.A. Young ("Young") are liable as

---

[1]On September 21, 2000, the court dismissed for failure to state a claim on which relief can be granted Faison's claims that prison officials held him in administrative confinement and deprived him of personal property without due process of law.

[2]In his complaint Faison states that he is suing the defendants in their individual and official capacities; however, Will v. Michigan Dept. of State Police, 491 U.S. 58 (1989), prohibits § 1983 suits against state officials acting in their official capacities. Therefore, the court will assume that Faison is suing the defendants in their individual capacities only.

supervisors because they were deliberately indifferent to these offensive practices. The Defendants have moved for summary judgment and Faison has responded, making the matter ripe for the court's consideration. For the reasons that follow, the court will deny the motions of Damron and Armentrout, and grant summary judgment for True and Young.

I.

Faison alleges the following facts. At 10 a.m. on May 21, 2000, Damron and seven other prison officials dressed in riot equipment approached Faison's cell and ordered Faison to approach the food tray slot. Faison complied and the officials placed him in handcuffs without incident. Based on Armentrout's orders, Damron and the officials escorted Faison to a segregated cell where they placed him in five-point restraints on a metal frame bed supporting a bare prison mattress. After ordering Faison to remove all of his clothes except his underpants, officials strapped Faison's ankles to opposite corners of one end of the bed and strapped his wrists to opposite corners of the other end. Metal locks secured the ankle and wrist straps. Officials also strapped Faison's chest to the bed so that Faison was immobilized. Except for one fifteen to twenty minute period on the evening of May 21, Faison remained strapped to the bed until 9:45 am on May 23.

During his almost forty-eight hour restraint, officials denied Faison clothes, sheets, blankets, and "minimum hygiene." This deprivation caused Faison to incur tremendous "mental stress and anguish." During the evening of May 21, officials released Faison and placed him in handcuffs and ankle shackles for one fifteen to twenty minute period to eat dinner. On the following day, officials reduced Faison's restraints to three or four points at meal times (breakfast, lunch and dinner). He suffered "intense" pain in his back, neck and shoulders during

his confinement. At one point, Faison "called and cried out" for his arthritis medicine. When he complained that the straps were too tight, a nurse determined that she could place two fingers under each strap and did not adjust them. Faison also complained that his wrists were strapped directly on the corners of the bed and officials then moved his wrists off the corners. He complained further that the metal locks were bruising his ankles and wrists. The nurse found no bruises or abrasions, however, and instructed Faison to stop fighting the restraints. For several weeks after his release, Faison suffered "excruciating" pain in his neck, back and shoulders. No officer ever charged Faison with a disciplinary violation for conduct occurring before he was placed in restraints, and he never had an opportunity to challenge his treatment during an official hearing.

Defendants acknowledge that officials confined Faison in five-point restraints from May 21, 2000 to May 23, 2000 without charging him with a disciplinary infraction or affording him a hearing. They offer no evidence to dispute Faison's assertions that he suffered "intense" pain during his restraint. Instead, they maintain that "Faison suffered no injury." In an sworn affidavit, K. Messer, a Registered Nurse at Red Onion State Prison, states that medical personnel periodically checked Faison during his restraint and discovered no bruises, broken skin or other injuries. Messer further states that medical staff saw Faison eight times over the five weeks after his restraint regarding his complaints of shoulder, back and neck pain. On two occasions, medical staff prescribed Motrin for Faison's pain, but repeated evaluations indicated that Faison had a normal range of motion with no evidence of any other abnormality.[3]

Defendants contend that officials placed Faison in five-point restraints not as punishment

---

[3]Defendants submitted Faison's medical records in support of Messer's affidavit.

but as a temporary "control mechanism . . . to ensure the safety of inmates and staff and the orderly operation of the prison." They assert that the restraints were appropriate because Faison threatened prison order and the safety of Prison Nurse Bolling ("Bolling"). On the morning of May 21, Defendants allege, Faison deliberately masturbated in front of Bolling when she reached Faison's cell to distribute his medication. Faison denies that he masturbated in front of Bolling. Defendants do not specifically allege that Bolling reported Faison's actions to prison officials before the officials placed Faison in restraints, but Warden True states in an affidavit that officials restrained Faison because his "inappropriate behavior posed a threat to [Bolling's] safety." According to the Serious Incident Report, "Bolling wrote a statement that she felt threatened by Inmate Faison's actions toward her." The report further provides that Officer Hopkins contacted Damron and "advised him of the incident," and Damron "then notified the Watch Commander Lieutenant J. Honaker." Damron assembled an "entry team" of himself and five other officers which proceeded to Faison's cell and ordered Faison to approach the cell door to be restrained. Faison complied, and the officers restrained him, escorted him to cell C-301 and placed him in five-point restraints without incident.

The Defendants argue that a severe security problem at Red Onion Prison heightened the threat of Faison's behavior. During a period of time in the Spring of 2000 including May 21, inmates' cell doors opened occasionally for no reason. Defendants do not allege that Faison's cell door opened by itself at any time relevant to this incident and Faison maintains that his cell door remained locked until the officials removed him. Defendants contend generally that inmates regularly took advantage of their open cell doors by masturbating in front of female staff. Giving prisoners disciplinary infractions actually encouraged this behavior because inmates

found amusement in questioning female staff at their disciplinary hearings about the behavior they had observed. As a result, for a short period of time, prison officials temporarily resorted to five-point restraints to gain control of prisoner behavior and reestablish prison order. They ceased using five-point restraints as a management tool in June 2000.

Faison claims that the Defendants' alleged actions violated his Eighth and Fourteenth Amendment rights. Defendants move for summary judgment asserting the affirmative defense of qualified immunity.

II.

State officials are entitled to qualified immunity against suits for damages if a reasonable officer facing the same situation would not have understood that his actions violated plaintiff's clearly established constitutional right. Anderson v. Creighton, 483 U.S. 635, 640 (1987). To address a claim of qualified immunity, the court "must first determine whether the plaintiff has alleged the deprivation of an actual constitutional right at all." Conn v. Gabbert, 526 U.S. 286, 290 (1999). If the plaintiff has alleged a constitutional violation, the court must determine whether the constitutional right was clearly established.[4] Id. "The relevant, dispositive inquiry in determining whether a right is clearly established is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." Saucier v. Katz, 121 S.Ct. 2151, 2156 (2001). "That is, in the factual scenario established by the plaintiff, would a reasonable officer have understood that his actions were prohibited?" Bennett v. Murphy, 274 F.3d 133, 137 (3d Cir. 2001).

---

[4]The steps are sequential because the qualified immunity issue and the constitutional violation issue are not so intertwined that they "should be treated as one question, to be decided by the trier of fact." Saucier v. Katz, 121 S.Ct. 2151, 2154 (2001).

A. Excessive Force

Faison claims that Defendants Damron and Armentrout's use of five-point restraints under the circumstances Faison alleges constituted cruel and unusual punishment in violation of the Eighth Amendment. The Eighth Amendment, enforced against the states through the Fourteenth Amendment, prohibits the infliction of "cruel and unusual punishments." U.S. Const. amends. VIII, XIV. The Eighth Amendment protects prisoners from the "unnecessary and wanton infliction of pain." Whitley v. Albers, 475 U.S. 312, 319 (1986) (citations omitted). To establish an Eighth Amendment excessive force claim,[5] an inmate must satisfy a subjective component–that the prison official acted with a sufficiently culpable state of mind–and an objective component–that the harm inflicted on the inmate was sufficiently serious. Williams v. Benjamin, 77 F.3d 756, 761 (4th Cir. 1996).

With respect to the subjective element, the court must determine whether the Defendants used force "in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm." Hudson v. McMillian, 503 U.S. 1, 7 (1992). The Supreme Court and the Fourth Circuit have set out the following factors to evaluate in determining whether a prison official acted maliciously and sadistically: (1) the need for the use of force, (2) "the relationship between that need and the amount of force used," (3) the threat "reasonably perceived by the responsible officials," and (4) "any efforts made to temper the severity of a forceful response." Hudson, 503 U.S. at 7. The absence of serious injury is also relevant, though not dispositive of the subjective

---

[5]The court will consider Faison's Eighth Amendment claim under the excessive force standard rather than the deliberate indifference standard because "the deliberate indifference standard is inappropriate when authorities use force to put down a prison disturbance." Hudson v. McMillian, 503 U.S. 1, 6 (1992).

analysis. Id.

With respect to the objective element, a prisoner "asserting malicious and sadistic use of force need not show that such force caused an 'extreme deprivation' or 'serious' or 'significant' pain or injury to establish a cause of action." Williams, 77 F.3d at 761 (quoting Hudson, 503 U.S. at 9). "All that is necessary is proof of more than *de minimus* pain or injury." Id. "[A]bsent the most extraordinary circumstances, a plaintiff cannot prevail on an Eighth Amendment excessive force claim if his injury is *de minimis*." Taylor v. McDuffie, 155 F.3d 479, 483 (4th Cir. 1998). However, the Fourth Circuit has "specifically recognized that the objective component can be met by 'the pain itself,' even if an inmate has no enduring injury." Williams, 77 F.3d at 762 (quoting Norman v. Taylor, 25 F.3d 1259, 1263 n.4 (4th Cir. 1994)).

Construing the evidence in the light most favorable to Faison, see Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986), the court finds that Faison's allegations are sufficient to state a constitutional claim of excessive force. With respect to the objective element, Faison alleges more than *de minimus* pain. Faison maintains that, although he was released for one fifteen to twenty minute period and his restraints were reduced to three or four points during meals, he endured almost forty-eight hours with all four of his limbs and his chest immobilized. He alleges that he suffered intense pain in his shoulders, back and neck. He also suffered arthritis pain and the restraints themselves caused pain in his wrists and ankles. Because officials denied Faison clothes, sheets, blankets and "minimal hygiene," Faison suffered tremendous "mental stress and anguish." In the weeks following his restraint, Faison's neck, back and shoulder pain was "excruciating." Defendants do not directly contest Faison's allegations of intense pain, apparently conceding that there is at least some issue of fact with respect to the

objective component. Following the Fourth Circuit's instruction, this court is "wary of finding uses of force that inflict 'merely' pain but not injury to be *de minimus*, and therefore beyond requiring justification under the Eighth Amendment." Williams, 77 F.3d at 762 n. 2. Accordingly, the court finds that Faison's allegations of pain satisfy the objective requirement.

The court also finds that Faison has alleged facts to support the subjective component of an excessive force claim. Defendants assert that they restrained Faison to control him and thus maintain the orderly operation of the prison. However, no facts in the record suggest that the Defendants needed to place Faison in five-point restraints to maintain prison order. Although inmate's cell doors were apparently opening "on their own" during the time of Faison's alleged masturbation, the Defendants do not allege that Faison's cell door ever opened in this manner, and Faison maintains that his cell remained locked until Damron removed him. The record does not indicate the amount of time that passed between Nurse Bollings alleged report to prison officials and Damron's removal of Faison from his cell. According to the Serious Incident Report, however, enough time passed for Nurse Bolling to make her report, for Officer Hopkins to contact Damron and advise him of the incident, and then for Damron to notifiy the Watch Commander, assemble a six man entry team and proceed to Faison's cell. In any case, Defendants concede that Faison was calm and compliant with their instructions when they removed him from his cell. Any threat that Faison posed to prison order or Nurse Bolling's safety had obviously ended by the time Damron reached Faison's cell to remove and restrain him. The court also finds no evidence that the Defendants made any effort to temper the severity of their response. The Defendants offer no evidence that they attempted other less severe disciplinary measures before placing Faison in five-point restraints. Accordingly, construing the

facts in the light most favorable to Fasion, Faison has stated a claim that the Defendants subjected him to five-point restraints for forty-eight hours for the malicious and sadistic purpose of causing him harm.[6] Based on the foregoing, the court finds that Faison has alleged facts stating a constitutional claim of excessive force against Damron and Armentrout, and thus satisfied the first prong of the qualified immunity analysis.

Consequently, the court moves to the "clearly established" prong of the analysis. The court views the relevant constitutional analysis of the factual scenario Faison alleges as follows: would it be clear to a reasonable official in May 2001 that the constitution prohibited placing in five-point restraints for forty-eight hours a calm, nonresistant inmate who no longer threatened prison security or safety? The court finds that Fourth Circuit precedent demonstrates that it was. The court has found no Supreme Court or Fourth Circuit case prohibiting the use of five-point restraints under the circumstances Faison alleges. However, "the exact conduct at issue need not have been held unlawful for the law governing an officer's actions to be clearly established." Amaechi v. West, 237 F.3d 356, 362 (4th Cir. 2001). In Williams, the Fourth Circuit strongly questioned prison officials' use of force in placing an inmate involved in a riot in four-point restraints for an eight-hour period after he had been sprayed with mace. 77 F.3d at 762-68. The Fourth Circuit found summary judgment inappropriate absent additional development of the facts regarding the prolonged use of these restraints. Id. The court noted that "[i]n our civilized society, we would like to believe that chaining a human being to a metal bed frame in a spread

---

[6]Even if the Defendants were justified originally in placing Faison in five-point restraints, Faison's allegations would still satisfy the subjective component because by keeping Faison in restraints for almost forty-eight hours, while he posed no reasonable threat to prison security, the Defendants used force maliciously and sadistically for the purpose of causing him harm.

eagle position would never be necessary. Unfortunately it sometimes is. Courts have thus approved the limited use of four-point restraints, as a last resort, when other forms of prison discipline have failed." Id. at 763. In light of this case law, on May 21, 2000, a reasonable prison official would have understood that confining a peaceable inmate to a bed for forty-eight hours for no reason at all, as alleged by Faison, is a constitutional violation. Consequently, the court finds that Damron and Armentrout are not entitled to qualified immunity at this stage in the litigation.[7] See Davis v. Lester, 156 F. Supp. 2d 588, 594 (W.D. Va. 2001) (denying motion to dismiss where defendant prison officials asserted qualified immunity for placing an inmate in five-point restraints for forty-eight hours in April 2000).

B. Procedural Due Process

Faison claims that Defendants Damron and Armentrout deprived him of a state created liberty interest within the protection of the Due Process Clause of the Fourteenth Amendment by placing him in five-point restraints for forty-eight hours, and did not afford him the constitutionally required procedural protections. Defendants respond that they placed Faison in restraints to control him, not to punish him. They also argue that enduring forty-eight hours in five-point restraints is not an atypical and significant hardship on a prisoner at Red Onion Prison because Red Onion is a maximum security prison.

In the state prison context, "States may under certain circumstances create liberty interests which are protected by the Due Process Clause." Sandin v. Conner, 515 U.S. 472, 483-84

---

[7]In so finding the court notes that the denial of qualified immunity at the summary judgment stage does not preclude Damron and Armentrout from arguing at trial that they reasonably perceived the facts relevant to Faison's restraint in a manner that justified the force they used.

(1995). To determine whether state prison officials have deprived a prisoner of a protected liberty interest, courts should consider the nature of the deprivation that the prisoner suffered. See generally id. at 481-484. The liberty interests that a state creates "will be generally limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to [substantive due process protection], nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." Id. at 484 (internal citations omitted). Thus, state prison officials' change of a prisoner's conditions of confinement deprives that prisoner of a state created liberty interest if the change imposes atypical and significant hardship on the inmate in relation to ordinary prison life. See Beverati v. Smith, 120 F.3d 500, 503 (4th Cir. 1997).

The court finds that Defendant's application of five-point restraints for forty-eight hours under the circumstances Faison alleges imposed atypical and significant hardship on Faison in relation to the ordinary incidents of prison life. See Williams, 77 F.3d at 768-70 (finding "forceful" the argument that eight-hour confinement in four-point restraints imposes atypical and significant hardship); Davis, 156 F. Supp. 2d at 596 (finding that the application of five-point restraints for forty-eight hours imposes atypical and significant hardship). As discussed above, a genuine issue of fact remains as to whether officials placed Faison in restraints to control him.[8] In any case, Faison's "total immobilization in the restraints surely 'work[ed] a major disruption

[8] However, even if the court were to assume that officials restrained Faison purely to gain control of him, a procedural due process issue would likely remain. The fact that officials place a prisoner in five-point restraints to gain control over him "does not mean that [five-point] restraints may be imposed indefinitely. At some point in time, an inmate so restrained would be entitled to some procedural protection to ensure that his liberty interest was not being arbitrarily and capriciously denied." Williams, 77 F.3d at 770.

in his environment,'" Williams, 77 F.3d at 769 (quoting Sandin 515 U.S. at 486), and the court finds that being totally restrained on a bed for almost forty-eight hours is substantially more restrictive than the conditions of confinement of the general prison population, even at Red Onion Prison. Faison alleges that he did not receive any notice that he had violated prison regulations or any opportunity to be heard before officials placed him in five-point restraints. Accepting these allegations as true, the court finds that Faison has alleged sufficient facts to state a claim that Damron and Armentrout deprived him of protected liberty without due process.

Since Faison has stated a procedural due process claim, the court will consider whether the Defendants are entitled to qualified immunity in light of Faison's factual allegation, i.e., whether it was objectively reasonable in May 2000 to confine an inmate in five-point restraints for forty-eight hours without affording him appropriate procedural protection. Although Sandin and Williams do not address the precise factual scenario articulated here, Williams makes it clear that placing an inmate involved in a riot in four-point restraints for eight hours after spraying him with mace is most likely an atypical and significant hardship, and Sandin establishes that prison officials may not imposes these conditions with out affording the inmate due process. The court finds that, together, they clearly establish Faison's right to be free from punishment in five-point restraints for forty-eight hours without due process protection. Consequently, Damron and Armentrout presently are not entitled to qualified immunity as to this claim. See Davis, 156 F. Supp. 2d at 594 (denying motion to dismiss procedural due process claim based on qualified immunity where defendant prison officials did not provide notice and a hearing before placing an inmate in five-point restraints for forty-eight hours).

C. Supervisor Liability

Construing Faison's complaint liberally, Faison alleges that Defendants True and Young are liable under section 1983 as supervisors. Faison claims that these Defendants were aware of the actions taken against him but did nothing to stop his unconstitutional treatment.

Supervisory liability under section 1983 is based "not upon notions of *respondeat superior*, but upon a recognition that supervisory indifference or tacit authorization of subordinate misconduct may be a direct cause of constitutional injury." Miltier v. Beorn, 896 F.2d 848, 854 (1990). The plaintiff must show that he faced a pervasive and unreasonable risk of harm from some specified source and that the supervisor's corrective inaction amounted to deliberate indifference or tacit authorization of the offensive practices. Id. Ordinarily, a plaintiff

> cannot satisfy his burden of proof by pointing to a single incident or isolated incidents . . . for a supervisor cannot be expected . . . to guard against the deliberate criminal acts of his properly trained employees when he has no basis upon which to anticipate the misconduct. A supervisor's continued inaction in the face of documented widespread abuses, however, provides an independent basis for finding he either was deliberately indifferent or acquiesced in the constitutionally offensive conduct of his subordinates.
>
> Slakan v. Porter, 737 F.2d 368, 373 (1990).

The court finds that Faison has not produced sufficient evidence to suggest that Defendants True, Young and other "unnamed Defendants" were deliberately indifferent or acquiesced in any constitutionally offensive conduct of their subordinates. The alleged constitutional violations here, i.e., the placement of Faison in five-point restraints for forty-eight hours and the failure to provide the appropriate procedural protections, are isolated incidents. Moreover, Faison has not shown that anybody but Damron and Armentrout are liable for these particular actions. Since Faison has produced no evidence supporting his supervisor liability claim the court need not consider Defendants' qualified immunity defense and will grant

summary judgment for Defendants True and Young.

III.

For the foregoing reasons, the court will deny Defendants Damron and Armentrout's motion for summary judgment and grant summary judgment for Defendants True and Young.

ENTER: this __ day of March, 2002.

_____
CHIEF UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

DOSSIE FAISON, JR.,	)	
	)	
Plaintiff,	)	**Civil Action No. 7:00CV00739**
	)	
v.	)	**ORDER**
	)	
SGT. D. DAMRON, et al.,	)	**By: Samuel G. Wilson,**
	)	**Chief United States District Judge**
Defendants.	)	
	)	

In accordance with the memorandum opinion entered this day, it is **ORDERED and ADJUDGED** that Defendants Damron and Armentrout's motion for summary judgment is **DENIED** and Defendants True and Young's motion for summary judgment is **GRANTED**.

ENTER: this __ day of March, 2002.

CHIEF UNITED STATES DISTRICT JUDGE